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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Procedures for Reviewing Requests for Relief | ) | |
| From State and Local Regulations Pursuant to | ) | WT Docket No. 97-192 |
| Section 332(c)(3)(7)(B)(v) of the | ) | |
| Communications Act of 1934 | ) | |
| | ) | |
| Guidelines for Evaluating the Environmental | ) | ET Docket No. 93-62 |
| Effects of Radiofrequency Radiation | ) | |
| | ) | |
| Petition for Rulemaking of the Cellular | ) | |
| Telecommunications Industry Association | ) | RM-8577 |
| Concerning Amendment of the Commission's | ) | |
| Rules to Preempt State and Local Regulation | ) | |
| of Commercial Mobile Radio Service | ) | |
| Transmitting Facilities | ) | |

**COMMENTS OF AT&T WIRELESS SERVICES INC. ON THE PETITION FOR PARTIAL RECONSIDERATION AND/OR CLARIFICATION OF AMERITECH MOBILE COMMUNICATIONS, INC.**

AT&T Wireless Services Inc. ("AT&T"), by its attorneys, hereby submits its comments on Ameritech Mobile Communications, Inc.'s ("Ameritech's") Petition for Partial Reconsideration and/or Clarification[1/] of the Commission's Second Order in the above-captioned proceeding.[2/] AT&T agrees with Ameritech that the Commission should reconsider its non-

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1/ Petition for Partial Reconsideration and/or Clarification filed by Ameritech Mobile Communications Inc. (October 14, 1997); Public Notice, Report No. 2237 (rel. Nov. 5, 1997).

2/ Procedures for Reviewing Requests for Relief From State and Local Regulations Pursuant Section 332(c)(3)(7)(B)(v) of the Communications Act of 1934; Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation; Petition for Rulemaking of the Cellular Telecommunications Industry Association Concerning Amendment of the Commission's Rules to Preempt State and Local Regulation of Commercial Mobile Radio Service Transmitting Facilities, WT Docket No. 97-197, ET Docket No. 93-62, RM-8577, Second Memorandum

(continued on next page)

binding policy statement on radiofrequency ("RF") compliance showings, which could lead to onerous compliance requests by states and localities during the interim period. Rather, the Commission should clarify that categorically exempt licensees need only state the grounds for their exemption and nothing more, both during the interim period and as a final rule.

In the Notice, the Commission set forth two alternatives regarding the compliance information carriers must provide to states and localities, and asked for comment on which proposal best protected the interests of all affected parties. While numerous commenters pointed out that the second, more onerous proposal would impose an unnecessary burden on carriers by requiring them to perform compliance evaluations for facilities that the Commission has found "are extremely unlikely to cause routine exposure that exceeds the guidelines,"[3/] the Notice could be read to sanction this alternative for the period before its rules are in place.[4/] Significantly, the Commission took this action without providing any notice and before it had reviewed -- indeed, before it had received -- any comment on the impact of its decision.

Under the non-binding policy statement, states and localities may seek to require categorically exempt licensees to explain how they have determined that their facilities will comply with the Commission's RF guidelines, including requiring licensees to assess the actual

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(continued from previous page)
Opinion and Order and Notice of Proposed Rulemaking, FCC 97-303 (rel. Aug. 25, 1997) ("Second Order" or "Notice").

3/ Notice at ¶ 142 (emphasis added).

4/ Because this interim alternative is a "non-binding policy statement," CMRS providers are not legally required to comply with excessive certification demands from state and local authorities during the interim period. Notice at ¶ 145. Nevertheless, unless the Commission changes or clarifies this policy, as requested by Ameritech, it will likely cause confusion on all sides and erect unnecessary barriers to entry throughout the country.

values for predicted exposure.[5/] As AT&T and others explained in their filings in response to the Notice, permitting states and localities to impose such requirements on licensees would completely eviscerate the decision to establish the categorically excluded category in the first place, and deny providers of commercial mobile radio services ("CMRS") the relief that Congress granted them in the Telecommunications Act of 1996.[6/] State and local authorities should not be permitted to demand anything more than a written certification that a facility is categorically excluded and the basis for the categorical exclusion to demonstrate compliance with the Commission's rules. Now that the Commission has received comment on this proposal, it should recognize how burdensome the second proposal would be, and adopt its first proposal instead for both the interim period and as a final rule.[7/]

Ameritech has also asked the Commission to prescribe specific rules to govern other issues arising out of the Second Order, such as cost sharing formulas for bringing sites with multiple transmitters into compliance, the responsibilities of site owners for ensuring compliance, and the content of signs to be posted in accessible areas where exposure may exceed the power density limits. While AT&T agrees that all these issues have created significant

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[5/] Id. at ¶¶ 145-147.

[6/] See Comments of AT&T Wireless Services, Inc. filed Oct. 9, 1997, at 2-5.

[7/] To supplement AT&T's previous examples of the burdensome and unnecessary compliance demonstrations many localities are already requiring from wireless carriers, AT&T is submitting another recent ordinance regarding RF compliance. See Clyde Hill, Wash., Municipal Code § 17.77.100 (1997) (attached hereto as Exhibit 1). The ordinance requires wireless carriers to measure the RF emissions at facilities both before and after they become operational and twice a year thereafter. All testing must be done by a licensed electrical engineer. This ordinance demonstrates precisely why the Commission should not allow each municipality to adopt its own compliance requirements.

confusion for licensees, the solution is not for the Commission to issue more guidelines or regulations. Rather, appropriate cost-sharing formulas and signage policies and standards should be developed in industry fora, while the responsibilities of site owners for compliance are more properly addressed in lease agreements. Once the appropriate parties have agreed to a solution, the Commission should support that solution.

Finally, while AT&T supports Ameritech's request for a reasonable transition period for compliance when an existing facility is found to exceed the Commission's exposure guidelines, certain aspects of that request need to be clarified. Under the transition rules as modified by the Second Order, existing facilities have until September 1, 2000 to come into compliance with the Commission's RF exposure guidelines, while facilities for which applications for new licenses, renewals, and modifications are filed must comply with the new regulations upon submission of the application.[8/] As Ameritech explains, once an application for renewal or modification is filed by one licensee at an existing site with multiple transmitters, all other licensees at that existing site will suddenly be required to comply with the new guidelines. Although AT&T agrees that these other licensees will need a reasonable period of time in which to come into compliance once a triggering application has been filed, Ameritech could not have meant to suggest that its proposed 90-day time frame would be a reasonable period of time for licensees to bring an entire site into compliance. While 90 days would be a sufficient amount of time for a licensee to evaluate the exposure levels from its facility and determine whether accessible areas at the site are in compliance, it certainly would not provide enough time to implement mitigation measures such as facility or site redesign or relocation. The redesign or relocation of facilities or sites may

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[8/] Second Order at ¶ 113.

also affect facilities at adjacent sites because some modifications may require system reengineering. As both Ameritech and AT&T demonstrated in earlier filings, significant resources and effort will be required to bring sites into compliance once licensees have determined that such action is necessary.[9/] Therefore, in response to Ameritech's request, the Commission should rule that licensees have at least 90 days from a triggering event to perform the tasks necessary to determine whether a site is in compliance. If mitigation is necessary, however, licensees should be permitted to comply in a timely manner as determined by the scope of the required mitigation.

[9/] Comments of AT&T Wireless Services, Inc., filed October 8, 1996; Comments of Ameritech Mobile Communications Inc., filed October 8, 1996.

## CONCLUSION

For the foregoing reasons, the Commission should not permit states and localities to demand demonstrations from licensees of categorically excluded facilities beyond a written certification that such facilities are in compliance with federal regulations. In this regard, the Commission should adopt its first compliance demonstration proposal as both a final rule and an interim guideline. In addition, the Commission should explicitly grant existing licensees a reasonable amount of time to assess whether their facilities are in compliance and, if required, undertake mitigation once site-wide compliance has been triggered. As for the other issues raised in Ameritech's petition, AT&T believes they are more appropriately addressed in industry fora and private agreements, and respectfully requests that the Commission refrain from acting on these issues.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Michelle Mundt, hereby certify that on this 26th day of November, 1997, I caused copies of the foregoing "Comments of AT&T Wireless Services, Inc." to be sent to the following either first class mail, postage pre-paid, or by hand delivery, by messenger(*) to the following:

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# ORDINANCE NO. 770

AN ORDINANCE OF THE TOWN OF CLYDE HILL, WASHINGTON, RELATING TO WIRELESS COMMUNICATIONS FACILITY SITING, PERMITTING AND LEASING ON PROPERTY WITHIN THE TOWN, REPEALING CHAPTER 17.77 AND ADDING A NEW CHAPTER 17.77 OF THE CLYDE HILL MUNICIPAL CODE, CANCELING THE EXISTING MORATORIUM, AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, the adoption of the Federal Telecommunications Act of 1996 (Public Law 104-104) (hereinafter "the Act") mandates that local government may not unreasonably discriminate among Wireless Communications Providers and cannot establish regulations which prohibit or have the effect of prohibiting the provision of wireless communications services; and

WHEREAS, the Act preserves local zoning authority to reasonably regulate Wireless Communications Facilities (WCFs); and

WHEREAS, WCFs comprise a rapidly growing segment of the utilities and communications sector; and



EXHIBIT 1

by the applicant prior to the date for Town Council consideration of the application.

2. Mailed Notice. The Town shall mail postcard notices to the owners of all real property within a radius of 300 feet of the subject land or property. The requirements of this subsection shall be satisfied if the notices are mailed to the person(s) shown to be the owners of such property on the records of the office of the King County Department of Records and Elections, and if mailed to the last address of such record owner.

3. Time of Notice. All posted notices shall be posted not less than 30 days prior to the date for Town Council consideration. All mailed notices shall be mailed not less than 15 days prior to the date for Town Council consideration.

4. Form of Notice. Mailed and posted notices shall state the name and address of the applicant, the location for the proposed WCF, provide a general description of the proposed WCF, set forth the date and time of Town Council consideration of the application, and provide any other information determined appropriate by the Town.

5. Expense of Notice. The applicant shall reimburse the Town for the costs of carrying out the notice requirements set forth in this subsection.

**17.77.100 Testing of Wireless Communications Facilities Required.**

A. Each permitted user shall conduct tests, at the users expense, necessary to establish the level of radio frequency radiation created by the WCF. The purpose of this testing is to ensure that the radio frequency radiation is in compliance with the FCC's regulations and standards.

B. Each user shall test the WCF location prior to complete installation of the WCF (to establish a "baseline") and again immediately after the WCF becomes fully operational. The user shall test the WCF every April and every October to measure the radio frequency radiation created by the WCF.

C. All such tests required by this section shall be performed by a licensed electrical engineer, or by a person with equivalent capabilities approved by the Town.

D. Copies of each and every radio frequency radiation test shall be submitted to the Town on the first day of the month following the month in which the test is performed. Such test results shall be certified by a licensed electrical engineer. No renewal of a permit or lease shall be granted unless the user submits the test results to the Town prior to the Town Council's consideration of the renewal application.

E. If at any time the radio frequency radiation test shows that the radio frequency radiation emanating from the WCF exceeds the standards established by the FCC, the user shall immediately disconnect the WCF and notify the Town. The WCF shall not be reconnected until the user demonstrates that corrections have been completed to reduce the radio frequency radiation to levels permitted by the FCC.

**17.77.110 Variance.**

A. No variance shall be granted to permit the placement of a WCF upon private property devoted to residential use or to permit the placement of WCFs in any location other than is specifically permitted under 17.77.090(B), except that a variance may be granted for locating WCFs upon property used for school or church purposes.

B. When adherence to the provisions of this chapter, other than location, prevents the applicant from providing communications services within the Town, a variance may be permitted provided each of the criteria outlined below are met. However, there shall be no variance for location except as provided in subsection A above. Any Provider seeking a variance shall apply in writing to the Town Council. Such application shall be made on the form provided by the Town.

C. The burden to establish the need for the variance shall be on the applicant. In order to establish a need for the variance the applicant shall be required to establish each of the following: